IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1049 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PASCHIM GUJARAT VIJ COMPANY LIMITED
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR PREMAL R JOSHI for Petitioner.
MR LB DABHI, AGP for Respondent No.1.
MS SHAILI A KAPADIA for Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 12/04/2007

ORAL JUDGMENT

1) In this petition, the petitioner Paschim Gujarat Vij Company Limited has challenged the legality of an order dated 19th September,

2005 passed by Additional Senior Civil Judge, Gandhidham-Kachchh below Exh.99 in Special Civil Suit No.132/1995.

2) Short facts leading to the petition are that respondent no.2 herein had filed Special Civil Suit No.103/1991 against the State Government and Gujarat Electricity Board, which was converted into Special Civil Suit No.132/1995 (new). The present petitioner seeks to espouse the cause of original defendant no.2 after bifurcation of the Gujarat Electricity Board into zones and constitution of different companies in different areas to succeed the activities of GEB.

2.1) During the pendency of the above mentioned suit, proceedings at the interim stage were carried upto this Court. Learned Single Judge of this Court by order dated 21-10-2004 passed in Appeal from Order No.182/1994 was pleased to give certain direction and also had provided that since the suit is 13 years old, the trial Court shall dispose of the suit latest by 31-12-2005.

2.2) After this order was passed by this Court, the petitioner moved an application Exh.99 raising a preliminary contention that the suit is not maintainable at all in view of the provisions contained in Bombay Electricity Duty Act, 1958. It is in this application that the trial Court passed the impugned order on 19th September 2005 holding that the suit is maintainable and rejected the preliminary objection of the petitioner to the maintainability of the suit.

3) Though learned advocate Shri Joshi for the petitioner made strenuous effect to convince me about the maintainability of the suit and the legality of the order passed by the trial Court, in facts of this case I do not find that the petition needs to be entertained.

4) As noted earlier, Civil Suit was filed as far back as in the year 1991. The State Government had filed its reply on 15-7-1991. A copy of the reply has been supplied by learned advocate for the petitioner. Perusal of the reply, suggests that no contention regarding maintainability of the suit was raised. In any case, the petitioner and other defendants remained silent about the preliminary contention for over 15 years. This Court desire that the suit should be disposed of expeditiously and in fact directed the same be concluded before 31st December, 2005. It was at this stage that the petitioner sought to raise a preliminary contention regarding maintainability of the suit itself. I do not find that the conduct of the petitioner would permit insistence on the suit being decided on preliminary issues. Therefore, without examining the legality of the order passed by the trial Court, this petition is rejected keeping all the contentions of the petitioner regarding the maintainability of the suit open to be urged, once the trial Court dispose of the suit as desired by this Court as early as possible.

5) With these observations, petition is disposed of. Rule is discharged. Interim relief, if any, stands vacated. No costs.

(Akil Kureshi, J.)

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